TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 215

JOHN C. SCHUMACHER, SHERIFF OF BUTLER COUNTY, OHIO, PETITIONER,

vs.

RALPH K. BEELER, TRUSTEE IN BANKRUPTCY OF THE LONG & ALLSTATTER COMPANY, BANKRUPT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED JULY 31, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

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IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Eq. 866

RALPH K. BEELER, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt, Plaintiff,

v.

JOHN C. SCHUMACHER, Sheriff of Butler County, Ohio, Defendant

APPLICATION FOR RESTRAINING ORDER—Filed August 26, 1933

To the Honorable the Judges of The District Court of the United States, in and for the Southern District of Ohio, Western Division:

Your complainant, Ralph K. Beeler, represents to the Court that he is the duly appointed, qualified and acting Trustee in Bankruptcy of The Long & Allstatter Company, of Hamilton, Ohio, Bankrupt.

Your petitioner further represents that by the consideration of the Honorable William Jerome Kuertz, Referee in Bankruptcy for the Southern District of Ohio, Western Division, in a proceeding pending before said Referee arising in said bankruptcy cause, on the 21st day of August, 1933, an order was entered whereby said Referee overruled a motion filed in said bankruptcy proceedings by one A. Hunter Willis, calling upon the Trustee to disclaim all right, title and interest in, or right of possession or control of, the real and personal property of the above bankrupt listed in the inventory and appraisement theretofore made and returned in this cause, and further ruled that so much of the personal property of the bankrupt which had been levied upon by John C. Schumacher, Sheriff of Butler County, on a judgment obtained by said A. Hunter Willis in cause No. A-30454 on the docket of the Court of Common Pleas of Hamilton County, Ohio, and on which said judgment execution issued from said Court of Common Pleas of Hamilton County to said Sheriff of Butler County, [fol. 2] as is not fixtures and not part and parcel of the

real estate of said bankrupt is subject to said levy and the jurisdiction of said Court of Common Pleas of Hamilton County, but that as to so much of said property as is real estate, or part and parcel of the real estate of said bankrupt and appurtenant or affixed thereto, said Referee ruled were within the sole jurisdiction and control of the Bankruptcy Court; that thereby said real estate under the bankruptcy laws was and is in the custody and control of the Trustee herein and that the sale thereof cannot lawfully be made except by order of the Bankruptcy Court, and that there is pending in said bankruptcy proceeding a petition by the Trustee to sell said real estate.

Your Trustee further represents that said controversy on said motion of said A. Hunter Willis arises by reason of the recovery by said A. Hunter Willis by the consideration of the Court of Common Pleas of Hamilton County, Ohio, of a judgment in the amount of One Hundred and Seven Thousand Plus Dollars against the bankrupt herein on June 10, 1932; that said judgment has been affirmed by the Court of Appeals for the First Appellate District of Ohio, and a motion to certify the record to the Supreme Court of Ohio denied; that pursuant to the order of execution aforesaid, but contrary to the statutes of the State of Ohio in such case made and provided, said Sheriff in addition to goods and chattels of The Long & Allstatter Company levied upon certain property affixed, appurtenant to and part of its operating plant in the City of Hamilton, Butler County, which in law are fixtures, and pursuant to said order of execution has advertised and threatens, unless restrained by this Court, on August 28, 1933, will sell at public auction all of the property of The Long & Allstatter Company, which appears set forth in the exhibit hereto attached, marked 1, and made part hereof. Said exhibit contains a list of the properties of said bankrupt claimed by this Trustee to be fixtures and appurtenant to and part of the realty thereof, and a part of its manufacturing plant.

Your Trustee further represents that under the law of Ohio, to-wit: General Code, Section 11664, the sheriff shall first exhaust goods and chattels of the judgment debtor before he may levy upon lands and tenements to satisfy a judgment; that contrary to the provisions of said section of the General Code of Ohio said Sheriff attempted to levy

upon fixtures, as hereinbefore set forth, and includes the same with goods and chattels of the bankrupt which he is about to sell as aforesaid.

[fol. 3] Your Trustee further represents that pending the determination by the Referee in Bankruptcy of the question of whether or not the property of bankrupt set forth in Exhibit 1 hereto attached be fixtures, if said Sheriff be permitted to sell the same, as he threatens to do, your Trustee will be irreparably injured and damaged and the orderly administration of the bankrupt's estate herein hindered and impeded, for which there is no adequate remedy at law.

Wherefore, the Trustee prays for an order directed to John C. Schumacher, as Sheriff of Butler County, Ohio, temporarily restraining and enjoining said Sheriff from proceeding with, causing or permitting the sale of any property of the bankrupt as set forth in Exhibit 1 hereto attached, on August 28, 1933, or any other day, until it be determined either in this proceeding, or in a proceeding before said Referee, as to whether or not said property be fixtures and a part of the manufacturing plant of said bankrupt, and therefore assets of the bankrupt estate, and upon final hearing that said injunction may be made permanent, and he prays for such other and further relief herein to which he may be entitled.

Brandon R. Millikin, Attorney for Ralph K. Beeler, Trustee.

STATE OF OHIO,
Butler County, ss:

Personally appeared before me, the undersigned, a Notary Public in and for said county and state, Ralph K. Beeler, the duly elected, qualified and acting Trustee in Bankruptcy herein, who on oath declared the allegations of the foregoing application to be true, as he verily believes.

Ralph K. Beeler.

Signed in my presence and sworn to before me this 25th day of August, 1933. Frederick A. Reister, Notary Public, Butler County, Ohio. My commission expires June 2, 1934. (Seal.)

Exhibit 1 to Application

Machinery and Equipment Bolted or Permanently Attached to the Building or Permanently Installed

In Production Office

1 Time Clock, attached and fitted.
1 Alarm System, attached and fitted.

In Lobby

Hose & Reel, attached.
1 International Time Recorder Clock & Rack, attached to wall.

In Drawing Room

1 24-drawer Wood Filing Cabinet (attached).
1 Filing Cabinet, built in.
1 24-drawer Wood Blue Print Filing Cabinet (nailed).
[fol. 4]
1 36-drawer Wood Filing Cabinet (nailed to floor).
2 11-drawer Wood Filing Cabinets (nailed to floor).
1 Long Wood Table, built in.

In Pattern Room

1 Saw, Motor Drive, bolted.
1 Planer (attached) with motor, bolted to floor.
1 20" Joiner (attached) with motor, bolted to floor.
1 36" Band Saw (attached) with motor, bolted to floor.
1 Sander (attached) with motor, bolted.
1 Small Sander, bolted (No value).
1 Large Numbering Machine (attached to bench attached to floor).
2 Small Numbering Machines (attached to bench attached to floor).
Built-in Drawers and Bench (attached).
1 27x Wet Tool Grinder, motor attached (bolted).
1 28x Pattern Maker Lathe, motor attached (bolted).

In Machine Shop, No. 1

1 18' Hand Traveling Crane with 3 T. Ch. Block, Attached to building.
1 14 Drawer Wood Work Bench (attached to floor) No value.

3 Fitting Trestles for couplings, fastened to floor. No value.
1 32″ Columbia Shaper (27P) M. D. Bolted.
1 28″ Columbia Shaper (28P) M. D. Bolted.
1 20″ Columbia Shaper (26P) M. D. Bolted.
1 Garvin Die Slotter, Belt Drive, bolted.
1 Electric Motor, bolted (9 E).
1 Traveling Crane with Block (H-2) att. to bldg.
1 Keyseater (4-S) B. D. Bolted.
Countershaft for slotter, bolted to wall.
1 Bullard Boring Machine (6B) 24″, motor att. Bolted Down.
1 36″ Bullard Boring Mill (8B) motor att. Bolted down.
1 5′ Niles Boring Mill (5B) Belt drive through motor att. to bldg. Bolted Down.
18′ Span Traveling Crane Block, att. to bldg.
1 Clock, att. to wall (No value).
[fol. 5]
1 Westinghouse Control System in Electric Room, att. to floor, Generators and switchboard, entire contents.
1 Traveling Crane Trolley & Block (hand) 1½ T. att. to bldg.
1 10″ P. & W. Slotter (5S) Belt, bolted down.
1 24″ Sellers Slotter (1S) Belt, bolted down.
1 20″ Niles Slotter (2S) Belt, bolted down.
1 #4 Cin. Miller (12M) Motor Drive, bolted.
1 #5 Cin. Miller (13M) Motor Drive, bolted.
1 36″ Garvin Cam Miller (7M) Knuckle Shaft Drive, bolted down.
1 32″ x 32″ x 8′ Gray Planer (10P) Belt, bolted.
1 30″ x 30″ x 8′ Gray Planer (9P) Belt, bolted.
1 Motor and Starter attached to bldg. (15 H. P.)
1 Motor and Starter attached to bldg.
1 Motor and Starter attached to bldg.
1 Double End Tool Grinder (17G) Belt, bolted.
1 36″ Hamilton Planer (8P) Belt, (bolted) and motor.
1 Motor and Starter for Hamilton Planer (7P), bolted down.
1 Hamilton 42″ x 42″ x 14′ Planer, (7P) Belt, bolted.
1 Starter and Control for Planer 6P. att. to bldg.
1 60″ Gray Planer (6P) Motor Attached, bolted.
1 44″ Niles Planer (5P) Motor Attached, bolted.
1 42″ Pond Planer (25P) Motor Attached, bolted.

1 4-Head Ingersoll Miller (11M) Motor att. and cutters bolted.
1 5′ Niles Boring Mill (4B) Belt, bolted.
1 Motor and Starter for Boring Mill (4B) att. to bldg.
Jib Crane and Block att. to bldg. (Chain Hoist).
1 6′ Gisholt Bor. Mill (9B) Motor att. Bolted.
1 10′ Niles Boring Mill (3B) Belt, bolted.
1 Mortor & Starter for Bor. Mill 3B, bolted down.
1 Circular Saw Sharpener, screwed down.
1 Motor, bolted (No Value).
1 Circular Saw Sharpener. Bolted.
1 Table Wood Saw, Motor Drive, bolted.
1 Wet Side Grinder, bolted.
Motor &Starter for Grinder, att. to bldg.
1 Gate Shear, (32X) bolted, belt drive.
Motor & Starter for Grinder, att. to bldg.
1 77″ x 24″ Gear Shaper (102P) Motor att. Bolted.
[fol. 6]
1 144″ x 36″ Gear Shaper (100P) Motor att. Bolted.
1 36″ Niles Lathe (25T) Motor att. bolted.
1 42″ x 30″ H. S. G. Lathe (1T) Motor attached. Bolted.
1 5′ Niles Radial Drill (1D) Motor att., bolted.
1 6′ Niles Radial Drill (17D) Motor att., bolted.
1 6′ Niles Radial Drill (18D) Motor att., bolted.
1 Jib Crane with Block, att. to bldg.
1 Horiz. Boring Machine (2B) Belt, bolted.
1 Motor and Starter, att. to bldg.
Line Shaft for Miller & 2 Drill Presses, att. to bldg.
1 40″ Back Geared Drill Press (5D) Belt, bolted.
1 42″ Back Geared Drill Press (6D) Belt, bolted.
1 Jib Crane & Block, att. to bldg.
1 Jib Crane & Block, att. to bldg.
1 25 T. Power Crane, att. to bldg.

In Machine Shop No. 2

1 Trolley Elec. Chain Block for Furnace, att.
1 Gleason Gear Shaper (3M) Belt, bolted.
1 Brainard Miller (1M) Belt, bolted.
1 B. & S. Miller (2M) Belt, bolted.
1 Bradford Engine Lathe (5T) Belt, bolted.
1 Monarch Lathe (26T) Motor att., bolted.
1 LeBlond Lathe (27T) Motor att., bolted.
1 18′ Hand Traveling Crane & Block, att. to bldg.

1 Arbor Press No. 5-106A, bolted.
1 Niles Lathe (3T) Belt, bolted.
1 G. E. Motor, 20 H. P. & Starter (9E) att. to bldg.
1 Lathe (4T) Belt, bolted, C/S att. to bldg.
1 Hamilton Lathe (11T) Belt, bolted, C/S att. to bldg.
1 Warner-Swazey Turret Lathe (28T) Motor att., bolted.
1 P. & W. Turret Lathe (19T) Belt, bolted C/S att. to bldg.
1 P. & W. Turret Lathe (18T) Belt, bolted, C/S att. to bldg.
1 Lodge Davis Lathe (8T), bolted, Belt, C/S att. to bldg.
1 S. B. & E. Lathe (6T) Belt, bloted, C/S att. to bldg.
1 Bradford Lathe (9T) Belt, bolted, C/S att. to bldg.
[fol. 7]
1 Bradford Lathe (7T) Belt, bolted, C/S att. to bldg.
1 Bradford Lathe (12T) Belt, bolted, C/S att. to bldg.
1 20 H. P. West. Motor & Starter, att. to bldg.
3 Line Shafts att. to bldg.
1 Circular Metal Cold Saw (1C) Belt, bolted.
1 18′ Hand Traveling Crane Block. att. to bldg.
1 Peerless Draw Cut Saw, Belt, bolted.
1 Chain Block & Runway (built in) Att. to bldg.
1 Tempering Furnace on floor, piped.
1 Gas furnace on floor, piped.
1 Blower & Motor, bolted.
1 Smith's Forge (38X), bolted on concrete.
1 Smith's Forge on Concrete Foundation.
1 Jib Crane, att. to bldg.
1 Nazel Air Hammer, motor att., bolted.
1 Niles Horiz. Floor Borer, Motor att., bolted.
1 Oil Extractor (17X) Belt, bolted.
1 Motor & Line Shaft (36E), att. to bldg. R. E.
1 Ingersoll Miller (4M) Belt, bolted. C/S att. to bldg.
1 Motor and Starter (37E) att.
1 Wet Tool Grinder (9G) Belt, bolted.
1 Wet Tool Grinder (5G) Belt, bolted, C/S att. to bldg.
1 Machine Bolt Cutter (18X) Belt, bolted, C/S att. to bldg.
1 Centering Machine (108A) Belt, bolted, C/S att. to bldg.
1 Arbor Press (107A) No. 3½, bolted.
1 Milling Cutter Grinder (15G) Motor attached, bolted.
1 Worthington Air Compressor with motor and tank, bolted.
1 Cupboard full of misc. tools, att. to bldg.

1 Rockford 2½ Miller (6M) Belt, bolted. C/S att. to bldg.
1 Flather & Co. Lathe (21T) Belt, bolted. C/S att. to bldg.
1 Drill Grinder (7G) Belt, bolted. C/S att. to bldg.
1 Kester 15 H. P. Motor & Starter, att. to bldg.
1 B. & S. Miller (5M) Belt, bolted. C/S att. to bldg.
1 Norton Tool Grinder (1G) Belt, bolted. C/S att. to bldg.

[fol. 8]

1 Old Punch Press (29X) Belt, bolted.
1 Fosdick Radial Drill (14D) Belt, bolted. C/S att. to bldg.
1 Upright Drill Press, Hamilton, (9D) Belt, bolted. C/S att. to bldg.
1 Upright G. & E. Drill (8D) Belt, bolted. C/S att. to bldg.
1 Friction Driven Drill Press (11D) Belt, bolted.
1 Cin. Upright Drill Press (12D) Belt, bolted.
1 Wall Clock, att. to bldg.
1 Gas Metal Heating Furnace attached.
1 25 T. Traveling Crane, att. to bldg.
1 25 T. Traveling Crane, att. to bldg.
1 Dries 8′ Radial Drill (15D) Motor att., bolted on concrete.
1 Liberty Openside Planer (11P) with motor & starter att., bolted.
1 Gray Planer (3P) Motor att., bolted. (48 in. x 72 in.)
1 Gray Planer (2P) Motor att., bolted.
1 Niles Horiz. Boring Mill (1B) Motor att., bolted down.
1 Jib Crane Chain Block, att. to bldg.
1 Openside Ingersoll Miller (8M) Motor att., bolted down.
1 Jib Crane & Chain Block, att. to bldg.
1 Work Bench & Vise, Att.
1 Openside D. & H. Planer (1P) Motor att., bolted down.
1 Motor & Starter 10 H. P. 440 V. A. C. att. to bldg.
1 Double Emery Wheel Stand, bolted down.
1 Dries 8′ Radial Drill (16D) Motors attached, bolted down.
3 Wood Work Benches and 8 vises attached, bolted to floor.

In Foundry

1 Toledo Floor Scale, built in.
2 30 T. Whiting Traveling Cranes, att. to bldg.

2 5 T. Northern Traveling Cranes, att. to bldg.
1 No. 5 Whiting Cupola, Bolted down (54")
1 No. 5 Whiting Cupola, Built in.
1 Time Recording Clock, attached to office wall.
1 Circular Saw Table, Bolted down, with motor attached.
1 Wood Bench and vise, attached.
1 Wood Bench and vise, attached.
[fol. 9]
1 Sand Slinger (Beardsley Piper Co.).
1 Sand Mixer, Bolted down to foundation.
1 Sand Crusher, Bolted Down.
2 10 T. Northern Traveling Cranes, att. to bldg.
1 Tumbling Mill fastened to floor, Bolted.
1 Tumbling Mill, fastened to floor, Bolted.
1 Double Grinder, fastened to floor, Bolted.
1 Suction Blower, built in, and accumulator. Att. to bldg.
1 Laidlaw Air Compressor complete, motor and storage tank, built in, bolted down.
1 Root Blower & Motor attached, bolted down.
1 Garden City Blower Fan, bolted down, and 1 motor knocked down.
1 G. E. Centrifugal Blower, motor attached, bolted down.

NOTE: The term "bolted" as used, means bolted to door. The term "C/S att. to bldg.", as used, means countershaft attached to building.

The term "belt" used in connection with the machines means belt drive."

Equipment Used in Manufacturing Plant

Power Plant and all attached wiring, motors and control equipment.
Heating Plant.
All Patterns, including Oldroyd patterns.
All Drawings.
All Jigs and Dies, including those for Oldroyd machines.

In Blue Print Room

1 Blue Print Dryer.
1 Photostat Machine & Box.
1 10-drawer Wood Filing Cabinet.
1 Blue Print Washer.
1 Blue Print Machine (Buckeye Engine Co.)

In Drawing Room

9 Drawing Boards.
1 3-Drawer Photo File Cabinet.
1 3-Drawer *P*lue Print File Cabinet.
1 Art Metal 3-drawer Blue Print Cabinet.
1 4-drawer Steel Filing Cabinet.
1 3-drawer Steel Filing Cabinet.
1 8-door Wood Filing Cabinet.

[fol. 10] In Pattern Room

1 Wood Work Bench.
1 Wood Desk, 5 drawer.
10 Wood pattern Making Benches with vises.
1 Wood Trimmer.
1 Wood Pattern Making Bench without vise.
2 Electric Glue Pots.
1 Hand Truck.
1 Lot (18) Wood Clamps.
1 Wood Table.
1 Wood Trimmer.
1 Wood Trimmer.
3 5-drawer Wood Filing Cabinets.
1 Door Drawing File.
1 Wood Bench with vise.
1 Band Saw Filing Machine (No Value).
1 Wood Trimmer.
2 Wood Filing Cabinets (20 drawers each).
1 Set 18 Compartment Comb. Filing Cabinet. (No value).

In Wash Room

1 Columbia Hotwell Heater.
3 72-section Clothes Lockers.
4 Wood Benches.
2 Lunch Tables (wood) seats attached.

In Machine Shop No. 1

1 14-drawer Blue Print Cabinet and cupboard.
1 Bell.
2 Sections Small Drawers for templets.
4 Vises.
1 Belt Lacer.
3 Surface Plates.

1 Shaper Chuck.
2 Adjustable Roller Stands.
1 4-wheel hand truck.
1 Vise in stand.
1 Clutch Chuck.
1 Vise.
1 Bell Tester & Blow Torch.
1 Lot Wrenches.
1 Lot Milling Cutters, etc.
1 Lot Milling Cutters.
1 Work Bench, metal legs.
1 Pattern Maker's Bench & Vise.
1 Vise & Bench.
1 Wooden Bench with drawers.
[fol. 11]
7 Jacks (1 Hydraulic, 6 lever).
Grindstone and stock castings.
1 Surface Plate.
Vise and Wood Bench.
1 Turpentine Tank.
2 Hand Trucks.
1 Howe Platform Scale, 1000#, (156W).
1 Platform Scale (159W) 6000#.
1 Steel Dump Bucket.
1 Lot (5) Hand Trucks.
1 Lift Truck.
2 Sling Chains.
12 Lifting Chains. (Hook.)
2 Single Hook Chains.
1 3-Hook Chain.
1 2-Hook chain.
2 2-hook Chains.
4 Chains (3 double, 1 single hook).
2 Grab Hooks & 1 Sling Chain.
1 Counter Platform Scales (158W).
1 Vise & Table.

In Stock Room

1 Section Steel Bins.
1 Steel Rack, 1 section.
1 Chain Block.
1 Steel Cabinet, (1 section).
1 Steel Cabinet.

1 Steel Cabinet & Candles.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Steel Cabinet.
1 Cabinet (Steel).

In Machine Shop No. 2

1 Coal Dump Bucket.
1 Chain Block.
1 Truck (Hand).
2 Straightening Presses.
1 Wood Work Bench & Vise.
1 Chain Block.
[fol. 12]
1 Table (Iron Legs) and Card Rack.
1 Lot Lathe Dogs.
1 Winch, Hand Power.
1 Wooden Shaving Cart, full.
1 Lot (4) Hand Trucks.
1 Smith's Anvil.
1 Lot Smithing Tools.
1 Smith's Anvil.
1 Howe Platform Scale (161W).
1 Portable Platform Scale (157W).
1 Chain Block.
1 Chain Block.
1 Chain Block.
1 Lot Sledge Hammers (10).
1 Lot Stock Grab Hooks.
2 Chains.
1 Chain.
1 Chain.
1 Chain.
1 Chain.
1 Lot (2) Chains.
1 Lot (4) Chains.
1 4-wheel Iron Frame Truck.

1 Chain Block.
1 4-wheel Truck.
2 Metal Circular Saws.
1 Bench & Vise.
1 Lot Gauges, Jigs & Sundry Tools.
1 Lot Gauges, Tools & Jigs.
1 Lot Milling Cutters.
1 Lot Milling Cutters.
1 Wood Bench & Misc. Collars & Tools.
1 Lot of Tools of various kind.
1 Lot Reamers, Drills & Various Tools.
1 Lot Shell Reamers.
1 Lot Pipe Cutters, Dies, etc.
1 Lot Drills & Taps.
1 Lot Hand Rachets.
1 Lot Reamers & Taps.
1 Lot Drills & Taps.
1 Lot Taps.
1 Lot Reamers & Counterbores.
1 Lot Drills & Reamers.
1 Lot Counterbores, etc.
1 Lot Reamers.
1 Set of Fixtures for 1 G. (Belong on Machine No. 655).
1 Small Chuck (Belongs on 1 G No. 655)
1 Air Drill.

[fol. 13]

1 Air Drill.
1 Wood Bench & Vise Att.
1 Small Lathe Grinder.
1 Lot Chucks & Reamers.
1 Lot Metal Figures & Holders.
Center Grinders.
1 Internal Grinder.
1 Air Drill.
1 Lot (4) Wood Work Benches.
1 Horse or High Trestle.
1 Chain Block (47H).
1 Lift Truck.
1 Work Bench & 6 Vises attached.
5 Hand Trucks (one 2 wheel, four 5 wheel).
1 Lift Truck.
1 Lot Misc. Drills.
1 Air Drill.
1 Air Drill.

1 Air Drill.
1 Air Drill.
1 Air Drill.
1 Lot (24) Air Hammers.
3 Air Grinders.
1 Wood Bench.
1 Anvil.
1 Heating Forge.
1 Surface Plate.
1 Lot Misc. Wrenches, etc.
1 Pipe Vise on Bench.
1 Pipe Cutter, 6″.
2 Pipe Stocks & Dies.
1 Pipe Vise.
1 Handle for 707 Pipe Cutter (Belongs with No. 707).
3 old anvils.
1 Lot (5) Wood Trestles.
1 Work Bench with Vise Attached.
1 Work Bench with Vise Attached.
1 Section Air Hose.
1 2-Hook Heavy Chain.
1 Lot (2) Chains (Lift).
1 Lot (3) Chains (Lift).
1 Lot (5) Chains.
1 Lot (2) Chains.
1 Lift Chain, Double Hook.
1 Lot (3) Chains, Double Hook.
1 Lot (2) Chains, double.
1 Rope Block & Chain.
1 Lift Chain.

[fol. 14]

1 Wood Buck on Rollers.
2 Wood Horses.
1 Thompson Houston 20 H. P. Motor.
1 Work Bench & 3 Vises attached.
1 Canvas Frame (Photo Background).
1 Work Bench & 5 Vises attached.
Taps, Drills, etc.
1 Lot (11) Sling Chains (Double and Single).
1 Lot (9) Screw Jacks and 1 Lever Jack.
1 Lot (12) Screw Jacks.
1 Sheet Metal Hand Punch.
Grab Hooks.

1 Reel with rope.
2 2-wheel Carts.
Sundry Tools.
1 Lot Scrap Cutters (11).
14 Milling Cutters
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Double Sling Chain.
1 4-Hook Heavy Duty Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
1 Sling Chain.
2 Sling Chains.
1 Plymouth Industrial Locomotive & Truck.
3 Small Service Plates (on Bench but not attached).
1 *Kit (5) Drawer Reamers, Taps & Wrenches* (on bench but not attached).
1 Lot Air Hose.
1 Lot (3) 4-wheel Hand Trucks.
[fol. 15]
1 3-Hook Sling Crain.
2 2-Hook Sling Chains.
1 3-Hook Sling Chain.
1 2-Hook Sling Chain.
1 3-Hook Sling Chain.
1 Lot Air Hose.
1 Lot Sand Clamps, Chain & Sundry Parts.

1 1½ Yd. Grab Bucket.
1 Lot (6) Wheelbarrows.
1 Flask Turning Hook & Bar.
1 Tabor Molding & Jolting Machine.
\ Lot (9) Hand Ladles.
/ Squeezer & Jolter on floor.
1 Vise.
1 Anvil.
1 Anvil.
1 Lot (8) Hand Ladles.
1 Oil Drying Torch.
1 Iron Ladle, 8T.
1 Iron Ladle, 12T.
1 Iron Ladle, 10T.
1 Iron Ladle, 6T.
1 Iron Ladle, 4T.
1 Iron Ladle, 3T.
1 Iron Ladle, 2T.
1 Iron Ladle, 800#.
1 Iron Ladle, 1200#.
1 Lot Swivel Hooks.
1 4-Hook Chain.
2 4-wheel Industrial trucks.
1 Wood 4-drawer Filing Cabinet.
1 Testing Scale (Iron).
1 Blackening Gun & Hose.
3 Core Drying Trucks, included in price of ovens.
1 2-hook Chain & 2 Grab Hooks.
1 Small Core Oven on Foundation.
3 Core Racks & Cores (Wood) No Value.
1 Hand Rod Shear.
1 Old Anvil.
1 Lot Core Plates.
1 20-section Steel Locker.
1 36-section Steel Locker.
1 28-section Steel Locker.
1 12-section Steel Locker.
1 Chain Block & Chain.
1 Bench (Wood) & Vise.
1 Lever Jack.

[fol. 16]

1 2-wheel Truck.
1 Air Hose, low pressure.

1 Lot (5 bbls.) Chaplets, also 65 bins chaplets.
1 lot (10) Air Rammers.
1 Bench & Vise.
1 Belt Lacing Machine.
1 Bench & 2 Service Plates.
1 Air Drill & Stand.
1 Wheelbarrow.
1 Lot (14) Coke Cans.
1 Lift Truck.
1 Lifting Scale Truck.
2 Steel Wheelbarrows.
1 Sand Cleaner.

IN UNITED STATES DISTRICT COURT

SUBPŒNA IN EQUITY—Filed August 31, 1933

The President of the United States of America to John C. Schumacher, Sheriff of Butler County, Ohio, Greeting:

You are hereby commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpœna at the Clerk's office of the United States District Court for the Southern District of Ohio, at Cincinnati, Ohio to answer unto the bill of complaint of Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt, in said Court exhibited against you. Hereof you are not to fail at your peril and have you then and there this writ.

Witness the Honorable Robert R. Nevin, United States District Judge at Cincinnati, Ohio, this 26th day of August, A. D. 1933.

Harry F. Rabe, Clerk, by H. E. Parker, Deputy Clerk.

[fol. 17] Memorandum

The defendant in this case is required to file his answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

U. S. Marshal's Return

Received this writ at Cincinnati, Ohio, on August 26, 1933, and on the same day I served same on the within named John C. Schumacher, Sheriff of Butler County, Ohio, by delivering to him a true copy of this writ, with the endorsements thereon, personally, at Hamilton, Ohio. And on the same day I served the said John C. Schumacher, Sheriff of Butler County, Ohio, with a certified copy of — Order in this cause, issued August 26, 1933, by delivering said certified copy to him personally at Hamilton, Ohio.

Paul H. Creswell, U. S. Marshal, S. D. O., by G. A. Reeves, Deputy.

And on August 28, 1933 I made further service in this cause by delivering to the within named John C. Schumacher, Sheriff of Butler County, Ohio, a copy of Bill in Equity in this cause, personally at Hamilton, Ohio.

Paul H. Creswell, U. S. Marshal, S. D. O., by John Theobald, Deputy.

In United States District Court

Notice of Application for Restraining Order—Filed August 26, 1933

To John C. Schumacher, Sheriff of Butler County, Ohio:

You will take notice that in the above entitled cause the undersigned will on Saturday, August 26, 1933, at 9 [fol. 18] o'clock A. M., apply to the Honorable Benson W. Hough, Judge of the United States District Court, for the Southern District of Ohio, Eastern Division, at Columbus, in said district, for a temporary restraining order restraining and enjoining you from conducting or permitting to be conducted a sale on execution on the judgment in cause No. A-30454 on the dockets of the Court of Common Pleas of Hamilton County, Ohio, entitled: A. Hunter Willis, Plaintiff, vs. The Long & Allstatter Company and F. B. Yingling, Defendants. This notice is given pursuant to law.

Brandon R. Millikin, Attorney for Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt.

Receipt of the above notice is acknowledged this 25th day of August, 1933.

John C. Schumacher, Sheriff of Butler County, Ohio.

IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed August 26, 1933

On application of Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt, filed in the District Court of the United States, for the Southern District of Ohio, Western Division, at Cincinnati on the 24th day of August, 1933, and for good cause shown, an order is hereby issued temporarily restraining and enjoining John C. Schumacher, as Sheriff of Butler County, Ohio, from proceeding with or permitting the sale on August 28, 1933, or upon any other day, of any of the property of said bankrupt set forth in Exhibit 1 attached to the petition in above cause, until it be determined, either in this proceeding or in a proceeding before Honorable William Jerome Kuertz, Referee in Bankruptcy at Cincinnati, Ohio, [fol. 19] as to whether or not the property set forth in Exhibit 1 of said Petition are fixtures and a part of the manufacturing plant of said bankrupt and therefore assets of said bankrupt estate to be administered by said Trustee.

Hough, District Judge.

9:30 A. M., August 26th, 1933.

IN UNITED STATES DISTRICT COURT

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND DISMISS CAUSE—Filed August 30, 1933

Now comes John C. Schumacher, the duly elected, qualified and acting Sheriff of Butler County, Ohio, named as the defendant herein, and represents to the court as follows:

1. That by virtue of a writ of execution issued by the Court of Common Pleas of Hamilton County, Ohio, on June 10, 1932, on a judgment rendered by said court on

said day in cause No. A-30454 on the docket of said court, wherein A. Hunter Willis was plaintiff and The Long & Allstatter Company, a corporation under the laws of Ohio, and F. B. Yingling were defendants, he levied, on June 16, 1932, upon all the personal property of The Long & Allstatter Company as well as the real estate of said company.

2. That on August 8, 1932, he made a return of this writ of execution stating that he had levied upon the following personal property of the said The Long & Allstatter Company:

All personal property situated, located and being in the plant of The Long & Allstatter Company, situated on High Street, between Fourth and Fifth Streets, and bounded on the North by Butler Street, and located on real estate known as Outlot No. 16 in the City of Hamilton, Butler County, [fol. 20] Ohio, and including the following: All office fixtures, furniture and supplies in said plant; all drafting tables and equipment in said plant, all raw materials; all manufactured products, machinery and parts, and products, machinery and parts in the process of manufacture in said plant, of every nature and kind whatsoever, whether finished or unfinished; all gears, forgings and castings, both rough and finished, for Oldroyd Coal Cutting Machines; also blue prints, patterns, jigs, dies, designs, drawings and specifications for said Oldroyd Coal Cutting Machines, and all bolts, rough stock and raw material for the manufacture of said Oldroyd Coal Cutting Machines, located in said premises; all other machinery of every kind whatsoever not a part of the realty; all tools, equipment and supplies of every kind whatsoever.

3. That attached to his return of the 4th alias order of sale issued on May 1, 1933, on said execution and judgment and returned by him on June 29, 1933, he made and returned an inventory of the personal property so levied upon by him and remaining unsold, a copy of which is hereto attached and made a part hereof, marked Exhibit A.

4. That by advertisement duly published in a newspaper published and of general circulation in Butler County, Ohio, to-wit: The Hamilton Journal News, he advertised the personal property, so levied upon by him as afore-

said, for sale, at public auction, on Monday, August 28, 1933, between the hours of 10 and 11 o'clock A. M. Said advertisement described said personal property as follows:

All personal property situated, located and being in the plant of The Long & Allstatter Company, situated on High Street, between Fourth and Fifth Streets, and bounded on the North by Butler Street, and located on real estate known as Outlot No. 16 in the City of Hamilton, Butler County, Ohio, and including the following: All office fixtures, furniture and supplies in said plant; all drafting tables and equipment in said plant, all raw materials; all manufactured products, machinery and parts, and products, machinery and parts in the process of manufacture in said plant, of every nature and kind whatsoever, whether finished or unfinished; all gears, forgings and castings both [fol. 21] rough and finished, for Oldroyd Coal Cutting Machines; also blue prints patterns, jigs, dies, designs, drawings and specifications for said Oldroyd Coal Cutting Machines, and all bolts, rough stock and raw materials for the manufacture of said Oldroyd Coal Cutting Machines, located in said premises; all other machinery of every kind whatsoever not a part of the realty; all tools, equipment and supplies of every kind whatsoever.

5. That on August 26, 1933, he was served with a copy of a temporary restraining order made and issued herein on said day temporarily enjoining him from proceeding with said sale of said personal property.

And the said John C. Schumacher, Sheriff of Butler County, Ohio, and defendant herein as aforesaid, without entering his appearance herein and solely for the purposes of this motion, moves the court to dissolve said temporary restraining order and to dismiss this suit for the following reasons to-wit:

1. This court is without jurisdiction to entertain a suit in equity in this matter against this defendant.

2. This court is without jurisdiction and authority to issue a temporary restraining order herein enjoining this defendant from proceeding with said sale.

3. Said temporary restraining order was issued without bond.

4. The items included in said inventory have been found by the Court of Common Pleas of Hamilton County, Ohio, to be personal property and subject to sale as such, and said order and judgment has become res adjudicata and is entitled to full faith and credit under the Constitution and laws of the United States.

5. All of the items included in said inventory of said Sheriff are in fact and in law personal property and subject to sale as personal property under the execution and orders of sale issued by the Court of Common Pleas of Hamilton County, Ohio, in said case No. A-30454.

John C. Schumacher, by Paul A. Baden, Pros. Atty., Butler County, Ohio. Peck, Shaffer & Williams, Coleman Avery, His Attorneys.

[fol. 22] EXHIBIT A TO MOTION TO DISSOLVE, ETC.

Inventory

Production Office

1 Steel Cabinet, 4 x 6
1 Wood Hat Rack
4 Steel Office Desks, 5 x 3
2 Typewriter Steel Desks, 4 x 3
1 Wood Office Deck, 3 x 5
1 Wood Stool Desk, 6 x 3
2 Steel 4-drawer Filing Cabinet, Art Metal
1 Steel 10-drawer Filing Cabinet, Art Metal
1 8-drawer Filing Cabinet, Art Metal (Steel)
1 6-drawer Steel Filing Cabinet, Art Metal
1 Drawing Table
1 Burroughs Adding Machine—#9, serial #130324
1 Wood Table, 2½ x 6, 2-drawer
1 11-drawer Wood Blue Print Cabinet
1 2-door Wood Table
2 Iron Fireproof Safes, MacNeil & Urbin
5 Wood Swivel Back Chairs
4 Straight Back Chairs
1 Wood Stool
1 General Electric Fan, 15 inch
1 General Electric Fan, 15 inch

Information Room

1 Steel Art Metal Table, 3 x 2
2 12-drawer Art Metal Steel Filing Cabinets
1 Steel Art Metal Typewriter Desk, 4 x 3
1 Steel Hat Rack
1 12-inch General Electric Fan
2 Straight Back Office Chairs
2 Swivel Wood Office Chairs
1 Glass Front Wood 1-section Book Case
1 Electric Desk Lamp

Secretary's Office

2 Roll Top Steel Office Desks, 3 x 5½
2 Electric Desk Lamps
2 Steel Tables, 5 x 3
2 Swivel Chairs
5 Straight Chairs
1 Hall Tree

Engineering Office

1 Roll Top Desk, 3 x 5½
1 Steel Table, 5 x 3
[fol. 23]
1 Steel Table, 4 x 2½
1 4-section Wood Book Case
1 Swivel Chair
5 Straight Chairs
1 8-drawer Art Metal Steel Cabinet
1 Hall Tree
2 Desk Lamps
1 12 inch General Electric Fan
1 Steel Waste Paper Basket

Purchase and Traffic Office

2 Roll Top Steel Desks, 3 x 5½
2 Steel Tables, 5 x 3
1 Steel Typewriter Desk, 4½ x 2′ 10″, 6-drawer
1 Steel Typewriter Desk, 3′ 10″ x 2′ 10″, 3-drawer
1 4-drawer Steel Filing Cabinet
2 4-drawer Steel Filing Cabinets with legs
1 3-drawer Filing Cabinet (low)
1 12-drawer Filing Cabinet

1 9-drawer Filing Cabinet
1 1-section Wood Book case
4 Swivel Office Chairs
4 Desk Lamps
4 Straight Chairs
1 8-door Glass Front Cupboard
1 Billing Machine
1 12 inch Electric Fan
1 Parcel Post Scale
1 Hall Tree

Accounting Office

3 Roll Top Desks, 3 x 5½ (Steel)
1 Typewriter Desk, 6-drawer (Steel)
1 Steel Typewriter Desk, 3-drawer
1 Steel Table, 5 x 3
1 Steel Desk (Steel) 2′ 4″ x 9′ 6″
5 Swivel Chairs
6 Straight Chairs
1 9-drawer Filing Cabinet (Steel)
1 14-drawer Filing Cabinet (Steel)
1 10-drawer Filing Cabinet (Steel)
1 Wood Section Book Case
1 Burroughs Adding Machine, #3898350
5 Desk Lamps
1 Sunstrand Adding Machine, #127281
1 Hall Tree
1 Steel Safety Cabinet, 4 x 6 (two doors)
[fol. 24]
1 15 inch Westinghouse Electric Fan
3 Steel Waste Baskets

Director's Meeting Room

1 Steel Table, 5 x 3

Lobby

1 4-section Steel Locker
1 10-Section Steel Locker
2 5-section Steel Lockers
2 Wooden Benches
1 Swivel Chair
1 Straight Chair

Superintendent's Office

1 Steel Typewriter Desk, 3-drawer
1 Steel Locker
1 Copy Machine
4 Straight Chairs
1 Swivel Chair
1 Desk Lamp
1 Smith Typewriter, #10
1 Parcel Post Scale

Blue Print Room

1 Photo-Stat Machine
1 Blue Print Dryer
1 Blue Print Machine (Buckeye Engine Co.)
1 Blue Print Washer
1 Wood Table, 3½ x 5

Drawing Room

9 Drawing Boards
1 Wood Top Desk, 4½ x 2' 8"
1 Swivel Chair
9 Stools
1 Art Metal 6-drawer Blue Print Cabinet
1 Art Metal 3-drawer Blue Print Cabinet
1 Art Metal 7-drawer Blue Print Cabinet
4 Wood Filing Cabinets, 5-drawer
4 Wood Filing Cabinets, 6-drawer
1 36-drawer Wood Filing Cabinet
1 4-drawer Wood Filing Cabinet
2 11-drawer Wood Filing Cabinets

[fol. 25]

2 15-inch General Electric Fans, #1405735 and #1409953
1 24-drawer Wood Blue Print Filing Cabinet
10 Desk Lamps
1 12-Drawer Wood Cabinet
1 Clock, Chicago Time Recorder

Pattern Room

10 Wood Pattern Making Benches with Vises
1 Wood Pattern Making Bench without Vise
1 Wood Work Bench

1 Wood Desk
2 6-drawer Wood Record Cabinets
3 5-drawer Wood Filing Cabinets
1 1-drawer Wood Filing Cabinet
1 Wood Card Cabinet
1 Wood Table
4 Wood Trimmers
3 Metal Pattern Stamping Machines
1 5X16" Motor Driven Disc. Sander, (bolted)
1 4X Vertical Disc. Sander, Motor attached, (bolted)
1 12-Section Clothes Locker
1 1X 36" Band Saw, motor attached (bolted)
1 14X Jointer, motor attached, (bolted)
1 13X Single Surfacer, motor attached (bolted)
1 15X Saw Table, (bolted)
4 Wood Trucks
1 Lot of Patterns, L. & A.
1 Lot of Patterns, Columbia Machine Tool
1 27X Wet Tool Grinder, motor atached (bolted)
1 28X Pattern Maker Lathe, (bolted)
1 Lot of Patterns Bolt Rods
1 Band Saw Fling Machine
1 Room "A" Pattern Storage
1 Cellar Storage Room

Wash Room

3 72-section Clothes Lockers
2 Lunch Tables (Wood) seats attached

Machine Shop No. 1

1 lot of Patterns, L&A. and Columbia Machine Tool
1 4H Crane Head Power, 18'
4 Vises bolted to bench
[fol. 26]
3 Service Plates
1 lot of Old Royd Jigs
8 Old Royd Boring Bars and 10 Bushes
20 L. & A. Mandrels
4 Clutch Benches (bolted)
15 Rolls of Scrap Belting
1 Belt Lacing Machine, #184783
1 Work Bench
13 Wood Tressels

1 #27P 32″ Columbia Crank Shaper, motor attached (bolted)
1 #28P Columbia Crank Shaper, motor attached (bolted)
1 #26 P 20″ Columbia Crank Shaper, motor attached (bolted)
1 #3S Die Slotter, 2½″ (bolted)
1 #9E Motor, 11 H. P., #13094 (bolted)
1 #4S Key Seatter, 12″ (bolted)
1 4-wheel Truck
1 #6B 24″ Verticle Boring Mill, motor attached (bolted)
1 #8B 36″ Verticle Boring Mill, motor attached (bolted)
1 #5B old style Boring Mill, motor attached (bolted)
1 #5S 10″ Slotter, Pratt & Whitney, (bolted)
1 #1S 24″ Slotter, Sellers (bolted)
1 #2S 20″ Slotter, Niles (bolted)
1 #12M number 4 Cincinnati Milling Machine, motor attached (bolted)
1 #13M number 5 Cincinnati Milling Machine, motor attached (bolted)
1 #7M 36″ Cam Cutter, Garvin, (bolted)
1 #10P 32″ x 32″ x 8′ Planner, Gray, (bolted)
1 #9P 30″ x 30″ x 8′ Planner, Gray, (bolted)
1 10 H. P. Wagner Electric Motor, #345315
1 Allis Chalmers 10 H. P. Motor, #9757K
1 Allis Chalmers 10 H. P. Motor, #84655
1 17G Double End Emery Grinder, (bolted)
1 #3B Verticle Boring Mill, (bolted)
1 #60E 25 H. P. General Electric Motor
1 #9B 72″ Boring Mill, motor attached #4548848 (bolted)
1 #4B 5″ Boring Mill, Niles, (bolted)
1 10 H. P. Wesche Motor
1 #11M 36″ x 32″ x 12′ 4H Ingersoll Milling Machine, motor attached, (bolted)
1 #9H Swinging Gib Crane

[fol. 27]

1 Yale Triplex Block Crane
1 H2 18′ Hand Power Travel Crane
1 #25P 42″ 10′ Planner, (bolted) 2 motors attached
1 #5P 44″ x 44″ by 12′ Planner, Niles, motor attached, (bolted)
1 #6P 60″ x 60″ by 12′ Planner, Gray, motor attached, (bolted)

1 #7P 42″ x 42″ by 14′ Planner, Hamilton Machine Tool (bolted)
1 18 H. P. Westinghouse Motor #324072
1 #8P 36″ x 36″ x 12′ Planner, Hamilton Machine Tool (bolted)
1 10 H. P. Allis Chalmers Motor
1 #4D 5′ Radial Drill, Niles
1 #2D 6′ Radial Drill, Hamilton Machine Tool (K. D.)
1 6′ Shaper, Henderson (K. D.)
10 Sling Chains
1 #6D 42″ Drill Press, Cincinnati Milling Machine (bolted)
1 #5D 40″ Drill Press, New Haven, (bolted)
1 #2B 4½″ Horizontal Boring Machine, Niles, (bolted)
1 #74E 7½ H. P. Motor #D7195G
1 H 16 Swing Gib Crane
1 #18D 6′ Universal Drill Press, Niles, motor attached, #19701 (bolted)
1 #17D 6′ Universal Drill Press, Niles, motor attached, #19702 (bolted)
1 #1D 5′ Radial Drill, Niles, motor attached
1 Jack Lift Truck
1 Iron Dump Bucket, capacity about 1½ yard
1 #1T 42″ x 30′ Engine Lathe, motor attached, (bolted)
1 25T 36″ x 28′ Engine Lathe, motor attached, (bolted) Niles
1 #100P 144″ x 36″ Gear Shaper, motor attached (bolted)
1 #102P 77″ x 24″ Gear Shaper, motor attached (bolted)
4 Trucks
6 Wheel Barrows
1 2-wheel Truck
1 #3M 24″ x 8′ Gear Shaper, Gleason, (bolted)
1 #1M 48″ Gear Cutter, Brainan, (bolted)
1 #2M 60″ Gear Cutter, Brown & Sharp (bolted)
1 #5T 28″ x 18′ Engine Lathe, Bardford, (bolted)
[fol. 28]
1 #26T 22″ x 16′ Engine Lathe, (bolted), motor attached
1 #27T 19″ x 12′ Engine Lathe, LeBlond, motor attached (bolted)
1 #1H 18″ Hand Power Travel Crane
1 #3T 24″ x 26′ Engine Lathe, Niles, (bolted)
1 Wood Bench with Vise and Stamping Block

1 #4T 20″ x 12′ Engine Lathe, (bolted)
1 #11T 22″ x 11′ Engine Lathe, Hamilton Machine Tool (bolted)
1 #28T number 5 Turret Lathe, Warren & Swasey, motor (attached) bolted
1 #19T 2″ x 26″ Turret Lathe, Pratt & Whitney, (bolted)
1 #18T 3″ x 36″ Turret Lathe, Pratt & Whitney, (bolted)
1 #8T 16″ x 8′ Engine Lathe, (bolted)
1 #6T 20″ x 10″ Engine Lathe, (bolted)
1 #9T 18″ x 8′ Engine Lathe, (bolted)
1 #7T 20″ x 10′ Engine Lathe, (bolted)
1 #12T 18″ x 8′ Engine Lathe, (bolted)
1 Chain Block, ½ ton capacity
1 #69E General Electric Motor, 20 H. P.
1 Westinghouse 20 H. P. Motor #49986
1 Kester 15 H. P. Motor
1 Westinghouse 7¼ H. P. Motor
1 #1C number 16 Cold Saw
1 #3C 14″ Rip Cut Saw
1 #36E 7½ H. P. Westinghouse Motor
1 18′ Span Hand Power Hoist over Steel Rack

Machine Shop No. 2

1 17X 16″ Oil Extractor
1 #157W Steel Bar Scale
1 #37X Nazel Hammer #731
1 Tempering Furnace for coal
1 Tempering Furnace for gas
2 Smith Forges
1 Smith Blower and Motor
2 Anvil Irons
1 lot Blacksmith Tools
1 #18H Gib Crane
1 161W Howe Scale, #750
1 20B Niles Horizontal Boring Mill, motor attached (bolted)
1 #4M 21″ x 16″ x 8′ Slab Mill, (bolted)
1 9G 36″ Wet Tool Grinder
[fol. 29]
1 5G 12″ Wet Tool Grinder
1 18X number 4 Bolt Cutter
1 108A number 4 6″ Center Machine, (bolted)
1 107A number 3½ Arbor Press, Greenerd

1 106A number 6 Arbor Press, Greenerd
1 Jack Lift Truck
1 #5 Gate Shear, 6′, New
1 #5 Gate Shear, 8′, New
5 Air Hammers
7 Air Drills
1 Air Grinder
8 Work Benches, (bolted)
21 Vises (bolted)
3 L. & A. Bar Benders, New
1 12D 21″ Drill Upright
1 8D 30″ Drill Upright
1 9D 30″ Drill Upright
1 11D 10″ Friction Drill
1 14D 5′ Radial Drill
1 Horse Tressel
1 29X Single Power Punch
1 31 x 36″ x 8′ Air Tank
5½ x 4½ Air Compressor, motor attached #37154
1 15G 24″ Cutter Grinder, motor attached
1 Work Bench
1 Vise
1 Dolly
1 L. & A. Open Side Planner, New, (K. D.)
1 1B 5½ Horizontal Boring Mill, motor attached
1 H10 Gib Crane
1 8M 54″ Milling and Boring Machine, Ingersoll, motor attached (bolted)
1 1P 84″ x 72″ by 18′ Open Side Planner, Dietrick & Harvey, motor attached, (bolted)
1 10 H. P. Wente Electric 4361988 Motor
1 10G Double End Grinder
30 Sets of Lifting Chains
1 16G 8′ Radial Drill, motor attached
1 Plymouth Locomotive #646
1 Car for Locomotive
1 L. & A. Press Brake, B. B. 10, 120 ton, New
1 Service Plate 6′ x 15′
1 Anvil
2 25 ton Traveling Cranes, Case
3 5D Press, 48 L. & A., New
1 L. & A. #3 Gate Shear, New

[fol. 30]

1 Thompson & Hudson 20 H. P. Motor, #3364, 33E
2 D66 Press, L. & A., New
1 15D 8′ Radial Drill, motor attached
1 11P 48″ x 48″ x 20′ Open Side Pan*n*er, Liberty motor attached, (bolted)
1 3P 72″ x 48″ x 14′ Gray Plan*n*er, motor attached
1 2P 72″ x 60″ x 20′ Gray Planner, motor attached

Foundry

1 lot Foundry Flask
1 10-ton Northern Traveling Crane
2 30-ton Whiting Traveling Cranes
2 5-ton Northern Traveling Cranes
1 1½ yard Grab Bucket
9 Foundry Lad*d*les
1 Toledo No-Spring Scale, #745681
1 Sand Slinger, (bolted)
1 Sand Mixer, (bolted)
1 5 H. P. Motor
1 Cross-cut Saw and Motor
1 3-section Clothes Locker
1 Iron Testing Scale
1 Table
1 Time Clock (built in)

Stock Yard

1 10-ton Northern Traveling Crane
1 pile of Scrap
2 Scrap Lad*d*les
Approximately 15 ton of Coke

Blower Room

65 Bins of Chaplets (mixed)
1 Root Blower, motor attached
1 Blower
1 Air Compressor complete
1 General Electric Blower and Motor

Charging Floor

15 Coke Cans
50 Bags of See Coal

1 Lifting Truck
1 Lifting Truck Scale

[fol. 31] Tool Room

1 7G Dry Drill Grinder
1 1G number 2 Universal Cutter
1 5M 1½ Universal Milling Machine
1 6M 2½ Rockford Milling Machine
1 21T 14" x 6' Engine Lathe
1 lot of Gear Cutters
1 lot of Taps
1 lot of gauges, males and females
1 lot of Reamers
1 lot of drills
1 lot of Sizers
1 Vise

Carpenter Shop

1 20X Cross-cut Saw, (bolted)
1 21X number 3 Automatic Circular Saw Sharpener
1 25 H. P. Thompson & Hudson Motor
1 22X 24" Circular Saw Sharpener

Grinding Room

1 Sand Stone Side Grinder and 20 H. P. Motor
1 32X 52" Gate Shear and 15 H. P. Motor
1 48X Rotary Splitting Shear
1 Bending Roll

Machine Shop No. 1 (cont'd)

1 Yale & Towne 20-ton Crane
1 24" Punch, #1, New
1 7½ H. P. Westinghouse Motor, #975831
1 10 H. P. Westinghouse Motor, #950117
1 20 H. P. Westinghouse Motor, #2221510
1 Fairbanks 20 H. P. Motor, #48192
1 L. & A. Lever Shear, New
1 General Electric 25 H. P. Motor, #5178689
1 Assortment of Jigs
1 #2 Punch and Shear, L. & A., New
1 5" Tire Welder, New
1 #4 Combination Punch and Shear
1 #6 Alligator Shear

3 #30 Presses
1 Bending Roller
1 Traveling Crane, 5-ton Casing, motor attached
2 Drop Hammers, #200 L. & A.
[fol. 32]
1 #6 Multiple Press, L. & A.
2 #6 Combination Punch & Shear, L. & A.
1 #2 Combination Punch & Shear, L. & A.
1 Assortment of Old Royd Castings and Gears
1 Trip Hammer, L. & A., New
1 8′ Casting Body
1 6G Wet Cutter Grinder
1 Assortment of Jigs, L. & A.

Storage Room

Assortment of Old Royd Patterns
Assortment of L. & A. Stock Gears

Stock Room

Assortment of Joint Bolts, 5/8′ to 1 3/8″
Assortment of Shear Bolts,
Assortment of Face Plate Bolts
Assortment of Hex Nuts
Assortment of Slotted Nuts
Assortment of Head Pins
Assortment of Taper Pins
Assortment of Slotter Pins
Assortment of Cap Screws
Assortment of Set Screws
Assortment of Miscellaneous Screws
Assortment of Round Head Screws
Assortment of Studs
Assortment of Washers
Assortment of Babbit-s
Assortment of Oil Cups
Assortment of Head Keys
Assortment of Straight Keys
Assortment of Richard Nuts
Assortment of Richard Punches
Assortment of P. & W. Punches
Assortment of P. & W. Nuts
Assortment of Springs
Assortment of Wrenches

Assortment of Mild Steel Bars
Assortment of Tool Steel Bars
Assortment of Cold Rolled Steel Bars

Stock

Assortment of Cast Iron Parts, Rough
Assortment of Steel Parts, Rough
Assortment of Brass Plate Stock
[fol. 33]
Assortment of Nails
Assortment of Tool Bits
Assortment of Electric Supplies
Assortment of Hand Files
Assortment of Pipe Fittings
Assortment of Tool Holders
Assortment of Window Glass
Assortment of Oils
Assortment of Shellac
Assortment of Paste
Assortment of Wood Screws
Assortment of Wood Dowell Pins
Assortment of Taps
Assortment of Grinding Wheels
Assortment of Cast Iron Parts, Finished
Assortment of Cast Steel Parts, Finished
Assortment of Balance Spring Rods
Assortment of Punch Stock
Assortment of Shear Blades
Assortment of Mild Steel Parts
Assortment of Yoke End Forgings
Assortment of Pulleys
Assortment of Beltings
Assortment of Line Shafts

John C. Schumacher, Sheriff Butler County, Ohio,
by A. E. Linkins, Deputy.

Expenses of Taking Inventory

Raymond Warndorf $20.00

In United States District Court

Answer—Filed September 11, 1933

Now comes the defendant and hereby withdraws the motion to dissolve the temporary restraining order issued

[fol. 34] herein and to dismiss this suit hereinbefore filed by him in this cause, enters his appearance herein and hereby consents that this Court may hear and determine all matters referred to in the petition herein.

Defendant admits that on the 21st day of August, 1933 an order was entered in the bankruptcy proceeding of The Long & Allstatter Company by the Honorable William Jerome Kuertz, Referee in Bankruptcy, overruling the motion of A. Hunter Willis calling upon the trustee to disclaim all right to the possession or control of all real and personal property of said bankrupt listed in the inventory and appraisement filed in said bankruptcy proceeding, which order also determined that so much of said property as is real estate, or part and parcel of the real estate, of said bankrupt and appurtenant or affixed thereto, were within the sole jurisdiction and control of the Bankruptcy Court, and that therefore said real estate under the bankruptcy laws was and is in the custody and control of the trustee herein, and that the sale thereof could not lawfully be made of said property except by order of the Bankruptcy Court, all as alleged in said petition. He says that no sale of the property levied on by him was held on August 28, 1933, because of the temporary restraining order issued by this Court.

He says that by virtue of a writ of execution issued by the Court of Common Pleas of Hamilton County, Ohio, upon a judgment rendered by said Court on June 10, 1932, being cause No. A-30454 in said court, wherein A. Hunter Willis was plaintiff and The Long & Allstatter Company, a corporation under the laws of Ohio, and F. B. Yingling were defendants, on June 16, 1932, he levied upon and took possession of all of the property of The Long & Allstatter Company set forth in Exhibit 1 attached to the petition herein, the same having been levied upon by him as personal property of said Company. He says at the same time he levied upon the real estate of said Company, same situate in the City of Hamilton, Ohio. He says that a controversy has arisen as to whether or not certain of said items of chattel property set forth in said Exhibit 1 are in law fixtures and therefore a part of the real estate. He says that it will be necessary before he can make a sale of said property to have determined what if any part of the chattel property so levied upon by him is a fixture and therefore a part and parcel of the real estate owned by said com-

pany, and what part thereof is personal property, so that he may be advised as to what part of the chattel property set forth in Exhibit 1 he has a right to sell under said execution.

[fol. 35] Defendant does not know as a matter of law whether the levy so made by him upon the real estate of said company is or is not a valid levy, and therefore puts the plaintiff on proof thereof.

Wherefore, defendant prays that the Court may hear and determine what part if any of the chattel property levied upon by him and contained in Exhibit 1 are fixtures and therefore a part of the real estate of said company, and that he may be advised and instructed accordingly.

Paul A. Baden, W. C. Shepherd, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO WITHDRAW ANSWER—Filed September 12, 1933

Now comes John C. Schumacher, Sheriff of Butler County, Ohio, defendant in the above entitled cause, and moves the Court for leave to withdraw the answer heretofore filed by him in the above entitled action on the 11th day of September, 1933.

John C. Schumacher.

IN UNITED STATES DISTRICT COURT

ORDER SETTING ASIDE TEMPORARY RESTRAINING ORDER—Filed November 6, 1933

This cause came on this day to be heard upon the Application of the Defendant upon two days' notice to the [fol. 36] opposite party to dissolve the temporary restraining order heretofore on August 26, 1933, made and issued herein and the Court being fully advised in the premises finds that said Application is well taken and should be sustained.

Wherefore, it is ordered and considered by the Court that the said temporary restraining order be, and the same

is, hereby set aside and dissolved at the costs of the Plaintiff. To which judgment of the Court plaintiff excepts.

Nevin, U. S. District Judge.

Have seen.

Paul A. Baden, Atty. for Deft., Brandon R. Millikin, Atty. for Pltf.

IN UNITED STATES DISTRICT COURT

ORDER RESTRAINING SALE OF PROPERTY FOR 10 DAYS—Filed November 6, 1933

On application of Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt, Plaintiff, filed in the District Court of the United States, for the Southern District of Ohio, Western Division, at Dayton, Ohio, on the 6th day of November, 1933, and for good cause shown, an order is hereby issued temporarily restraining and enjoining John C. Schumacher, as Sheriff of Butler County, Ohio, for a period of ten days from this date from proceeding with or permitting the sale of any of the property of said bankrupt set forth in Exhibit 1 attached to the petition in above cause.

Defendant excepts, and excepts especially to the granting of this order without bond.

Nevin, U. S. District Judge.

Have seen.

Paul A. Baden, Atty. for Deft. Brandon R. Millikin, Atty. for Pltf.

[fol. 37] IN UNITED STATES DISTRICT COURT

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND DISMISS CAUSE—Filed November 10, 1933

Now comes John C. Schumacher, the duly elected, qualified and acting Sheriff of Butler County, Ohio, named as the defendant herein, without entering his appearance herein, and represents to the court as follows:

1. That by virtue of a writ of execution issued by the Court of Common Pleas of Hamilton County, Ohio, on June

10, 1932, on a judgment rendered by said court on said day in cause No. A-30454 on the docket of said court, wherein A. Hunter Willis was plaintiff and The Long & Allstatter Company, a corporation under the laws of Ohio, and F. B. Yingling were defendants, he levied, on June 16, 1932, upon all the personal property of The Long & Allstatter Company as well as the real estate of said company.

2. That on August 8, 1932, he made a return of this writ of execution stating that he had levied upon the following personal property of the said The Long & Allstatter Company.

All personal property situated, located and being in the plant of The Long & Allstatter Company, situated on High Street, between Fourth and Fifth Streets, and bounded on the North by Butler Street, and located on real estate known as Outlot No. 16 in the City of Hamilton, Butler County, Ohio, and including the following: All office fixtures, furniture and supplies in said plant; all drafting tables and equipment in said plant, all raw materials; all manufactured products, machinery and parts, and products, machinery and parts in the process of manufacture in said plant, of every nature and kind whatsoever, whether finished or unfinished; all gears, forgings and castings, both rough and finished, for Oldroyd Coal Cutting Machines; also blue prints, patterns, jigs, dies, designs, drawings and specifications for said Oldroyd Coal Cutting Machines, and all bolts, rough stock and raw materials for the manufacture of said Oldroyd Coal Cutting Machines, located in said premises; all other machinery of every kind whatsoever not a part of the realty; all tools, equipment and supplies of every kind whatsoever.

3. That attached to his return of the 4th alias order of sale issued on May 1, 1933, on said execution and judgment and returned by him on June 29, 1933, he made and returned an inventory of the personal property so levied upon by him and remaining unsold, a copy of which is hereto attached and made a part hereof, marked Exhibit A. [fol. 38] 4. That on October 30, 1933, the Clerk of the Common Pleas Court of Hamilton County, Ohio issued to him a seventh alias order of sale on the execution and judgment aforesaid, commanding him again to forthwith sell or cause to be sold the personal property levied upon by

him as aforesaid and make due return of this execution to said court within sixty days.

And the said John C. Schumacher, Sheriff of Butler County, Ohio, and named as defendant herein, as aforesaid, without entering his appearance herein and solely for the purposes of this motion, moves the court to dissolve the temporary restraining order heretofore, on November 6, 1933, issued herein and to dismiss this suit for the following reasons, to-wit:

1. This court is without jurisdiction to entertain a suit in equity in this matter against this defendant.

2. This court is without jurisdiction and authority to issue a temporary restraining order herein enjoining this defendant from proceeding with the sale of said property.

3. Said temporary restraining order was issued without bond.

4. The items included in said inventory have been found by the Court of Common Pleas of Hamilton County, Ohio, to be personal property and subject to sale as such, and said order and judgment has become res adjudicata and is entitled to full faith and credit under the Constitution and laws of the United States.

5. All of the items included in said inventory of said Sheriff are in fact and in law personal property and subject to sale as personal property under the execution and orders of sale issued by the Court of Common Pleas of Hamilton County, Ohio, in said cause No. A-30454.

6. This court has already considered the question of said items contained in said inventory, which was attached to a motion for a temporary restraining order, filed on April 4, 1933, in cause No. 10326 in bankruptcy in this court and on April 13, 1933, dissolved the temporary restraining order issued on said motion.

John C. Schumacher, by Coleman Avery, Peck, Shaffer & Williams, Paul A. Baden, His Attorneys.

(NOTE.—A carbon copy of inventory appearing with the "Motion to Dissolve Temporary Restraining Order and Dismiss Cause" filed August 30, 1933, is annexed to this Paper but is omitted here as a duplication.)

[fol. 39] IN UNITED STATES DISTRICT COURT

ORDER GRANTING JURAT ON BILL OF COMPLAINT—Filed November 16, 1933

It appearing to the court that the jurat attached to the bill in equity filed herein was made by the petitioner on information and belief, leave now is given to the petitioner herein to file an amended jurat sworn to positively in accordance with the requirements of the equity rule and that the same may be made upon the original bill filed herein or attached thereto, to all of which defendant excepts.

Nevin, J.

Have seen but do not consent and on the contrary except to entry hereof.

Coleman Avery, Attorney for Defendant.

Have seen.

Brandon R. Millikin, Att. for Pltf.

IN UNITED STATES DISTRICT COURT

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND DISMISSING CAUSE—Filed Nov. 16, 1933

This cause came on this day to be heard upon the motion of John C. Schumacher, Sheriff of Butler County, Ohio, named as defendant herein, to dissolve the temporary restraining order heretofore, on November 6, 1933, issued herein and to dismiss this suit, for want of jurisdiction in the court, and was argued by counsel and submitted to the court. And the court, being fully advised in the premises, finds that said motion is well taken and should be granted.

Wherefore it is ordered that the said motion to dissolve said temporary restraining order and dismiss this cause be, and the same hereby is, granted and the said temporary [fol. 40] restraining order set aside and dissolved and said cause dismissed at the costs of the plaintiff.

To all of which plaintiff excepts.

Nevin, District Judge of the United States, Southern District of Ohio, Western Division.

Have Seen.

Brandon R. Millikin, Atty. for Pltf. Coleman Avery, Atty. for Deft.

In United States District Court

Petition for Appeal—Filed Nov. 25, 1933

Now comes Ralph K. Beeler, the duly appointed, qualified and acting Trustee in Bankruptcy of The Long & Allstatter Company, bankrupt, and respectfully represents to the court that on or about the 16th day of November, 1933, this court entered a final order dissolving the temporary restraining order therefore issued in this case and dismissing this cause at the costs of the plaintiff, in which order and judgment of this court and the proceedings had prior thereunto in this cause, certain errors have intervened to the prejudice of this plaintiff, all of which will more fully and at large appear in the assignment of errors filed herewith and this plaintiff does hereby appeal from said order dissolving said temporary injunction and dismissing this cause.

Wherefore, your plaintiff prays that its appeal may be allowed herein to the United States Circuit Court of Appeals for the Sixth Circuit from said order dissolving said temporary injunction and dismissing this cause, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers on which said order was based be made and duly authenticated and sent to the said United States Circuit Court of Appeals for the Sixth [fol. 41] Circuit sitting at Cincinnati, Ohio.

Plaintiff further prays that the court will fix the amount of the appeal bond herein.

Ralph K. Beeler, Trustee in Bankruptcy, The Long & Allstatter Company, by Brandon R. Millikin, His Attorney.

In United States District Court

Assignment of Errors—Filed Nov. 25, 1933

Now comes Ralph K. Beeler, the duly appointed, qualified and acting Trustee in Bankruptcy of The Long & Allstatter Company, bankrupt, plaintiff in the above entitled action and in connection with, and as a part of the petition for appeal makes the following assignment of errors, which it claims occurred in the proceedings in this case, to-wit:

1. The court erred in dismissing the within action for want of jurisdiction.

2. The court erred in dismissing the within action and dissolving the temporary restraining order theretofore issued for the reason that said court did have jurisdiction of said action did have jurisdiction to issue said temporary restraining order and other and further restraining orders and injunctions.

3. The court erred in dissolving said temporary restraining order and dismissing said cause for the reason that the bill of complaint of the plaintiff herein stated a cause of action.

4. The court erred in dismissing said bill of complaint and dissolving said temporary restraining order for the reason that the defendant, John C. Schumacher, Sheriff of Butler County, had consented to the jurisdiction of the court.

[fol. 42] 5. The court erred in entering said order dissolving the temporary restraining order and dismissing the cause for the reason that the defendant, John C. Schumacher, had expressly consented in writing to the court hearing and determining the matters alleged in the petition of the plaintiff herein.

6. The court erred in entering said order dissolving the temporary restraining order and dismissing the cause for the reason that the defendant, John C. Schumacher, Sheriff of Butler County, Ohio, had submitted his person to the jurisdiction of this court and could not thereafter withdraw therefrom nor defeat the jurisdiction of this court to the prejudice of this plaintiff.

7. The court erred in entering said order dissolving said temporary restraining order and dismissing said cause in deciding that diversity of citizenship was necessary to give jurisdiction to this court.

8. The court erred in entering said order dissolving said temporary restraining order and dismissing this cause for the reason that this court had jurisdiction, power and authority upon the filing of the petition herein to protect the jurisdiction of the bankruptcy court and of your plaintiff as trustee in bankruptcy in its possession of the property

set forth and enumerated in the exhibit attached to the bill of complaint herein.

9. The court erred in dismissing said cause without hearing any evidence.

10. The court erred in entering said order dissolving said temporary restraining order and dismissing this cause herein for other errors of law appearing or which will appear on the record when the same is completed.

Brandon R. Millikin, Attorney for Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Co.

[fols. 43 & 44] In United States District Court

Order Allowing Appeal—Filed Nov. 25, 1933

Upon presentation to the court of the petition of Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, bankrupt, praying for the allowance of an appeal herein, and of the assignment of errors intended to be urged and praying also that a transcript of the record and proceedings, and papers upon which said order and judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

Upon consideration whereof the court finds that said petition for appeal ought to be granted and does hereby grant and allow the same. The court further fixes the amount of the appeal bond for such appeal in the sum of $100.00.

Robert R. Nevin, Judge United States District Court, S. D. O.

Bond on appeal for $100.00, approved and filed Nov. 25, 1933, omitted in printing.

[fol. 45] Citation in usual form, showing service on Coleman Avery, filed Nov. 27, 1933, omitted in printing.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE RECORD—Filed Dec. 15, 1933

For good cause shown, on application of the complainant herein, the time within which the complainant may prepare [fol. 46] and print the transcript on appeal and file the printed record and make return of the appeal herein to the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled action is hereby extended Sixty (60) days.

Nevin, J.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 11, 1934

To Harry F. Rabe, Clerk United States District Court:

Please prepare the following pleadings and other papers filed herein for transcript of record to be sent to the printer and thereafter to be filed in the United States Circuit Court of Appeals for the Sixth Circuit.

1. Bill in Equity.
2. Subpœna in Chancery and return of United States Marshal thereon.
3. Notice of application for temporary restraining order, together with receipt of copy of notice by respondent.
4. Order temporarily restraining Sheriff, together with the return of the United States Marshal upon such order.
5. Motion to dissolve injunction and dismiss, filed August 30, 1933.
6. Motion to withdraw answer, filed September 12, 1933.
7. Order dissolving injunction filed November 6, 1933.
8. Order granting temporary restraining order of November 6, 1933.
9. Motion to dissolve injunction and dismiss, filed November 6, 1933.
10. Order granting leave to correct jurat.
11. Order dissolving temporary restraining order and dismissing cause filed November 16, 1933.
12. Petition for appeal.

[fol. 47] 13. Assignment of errors.
14. Order allowing appeal and fixing bond.
15. Bond and approval thereof.
16. Citation.
17. Return of citation showing acknowledgment of service.
18. This præcipe.

Ralph K. Beeler, Trustee in Bankruptcy of the Long & Allstatter Company, Complainant, by Brandon R. Millikin, Attorney.

Service upon me of a copy of above motion is hereby acknowledged this 11th day of January, 1934.

Coleman Avery, Attorney for John C. Schumacher, Sheriff of Butler County, Ohio.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR ADDITION TO TRANSCRIPT—Filed Jan. 17, 1934

Please include in the transcript on appeal in the above entitled case, in addition to the papers specified in the præcipe heretofore filed herein, the order entered December 15, 1933, extending the time for appellant to print and file his record in the Court of Appeals herein.

Also please include the motion to dismiss and dissolve which was filed November 10, 1933, but which was erroneously designated in the former præcipe heretofore filed herein as having been filed on November 6, 1933.

Brandon R. Millikin, Attorney for Ralph K. Beeler, Trustee in Bankruptcy, etc.

[fols. 48-50] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR ADDITIONS TO TRANSCRIPT OF RECORD—Filed February 6, 1934

To Harry F. Rabe, Clerk United States District Court:

Please prepare and transmit to the printer for inclusion in the transcript of the record in the above entitled case, to be filed in the United States Circuit Court of Appeals for

the Sixth Circuit, the answer filed by John C. Schumacher, Sheriff, defendant herein, on or about September 11, 1933, which answer was inadvertently omitted from the original præcipe herein. Also please transmit this præcipe for addition to the record.

Ralph K. Beeler, Trustee, etc., by Brandon R. Millikin, Attorney.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 51] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION OF APPELLEE TO CORRECT ERROR IN RECORD (APPROVED)—Filed February 15, 1934

Now comes appellee, John C. Schumacher, Sheriff of Butler County, Ohio, and suggests to the court that by accident or error there was omitted from the transcript and printed record, heretofore filed herein by appellant, a thing material to appellee, to-wit: the verification, or alleged verification, attached to the petition or bill of complaint in the court below, a certified copy of which said petition or bill of complaint, including said verification or alleged verification, is attached hereto and filed herewith.

Upon said suggestion, appellee moves the court to direct that the omission be corrected by a supplemental transcript in such manner as the court shall order.

John C. Schumacher, Sheriff of Butler County, Ohio, by Paul A. Baden, Prosecuting Attorney; J. W. Peck, Coleman Avery, His Counsel.

Memorandum:
Rule 76 Federal Equity Rules.

I have this 15th day of February, 1934, received a copy of above Motion.

Brandon R. Millikin, Attorney for Ralph K. Beeler, Trustee.

[fols. 52-54] Petition omitted, printed side page, 1 ante.

[fol. 55] In United States Circuit Court of Appeals

Cause Argued and Submitted—June 5, 1934

Before Moorman, Simons and Allen, JJ.

This cause is argued by Brandon R. Millikin and Province M. Pogue for Appellant and by John W. Peck and Coleman Avery for Appellee and is submitted to the Court.

[fol. 56] In United States Circuit Court of Appeals

Judgment—Filed June 29, 1934

Appeal from the District Court of the United States for the Southern District of Ohio

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby set aside.

In United States Circuit Court of Appeals

Opinion—Filed June 29, 1934

Before Moorman, Simons and Allen, Circuit Judges

Simons, Circuit Judge:

The meritorious question involved in both causes is whether a levy upon real and personal property by the Sheriff of one Ohio county under a judgment of the court of another county, results in the custody of the property being acquired by the court rendering the judgment, and therefore immune to process of the bankruptcy court in proceedings begun more than four months after the entry of the judgment and the making of the execution levy. Before this can be decided, however, a number of jurisdictional questions must be determined.

[fol. 57] A. Hunter Willis on June 10, 1932, obtained a judgment against the bankrupt in the Court of Common Pleas of Hamilton County, Ohio. The bankruptcy adjudication followed on April 4, 1933. Meanwhile, and more than four months prior to adjudication, the judgment creditor obtained a writ of execution from the Hamilton County court, directed to the Sheriff of Butler County, who contemporaneously levied on both the personal property and the real estate of the bankrupt. The judgment creditor appeared specially in the bankruptcy proceedings, and moved that the trustee therein either pay the judgment with interest and costs or disclaim all right, ownership and control of the property levied upon. The Referee to whom the motion was referred entered an order granting it with respect to the personal property, but denying it with respect to the real estate. Willis petitioned the District Judge to review the Referee's order, but so far as we are advised by the record, no disposition has been made of his petition to review. Subsequently, upon motion of the trustee, a temporary injunction was issued in the bankruptcy proceedings, restraining the Sheriff from selling the property in Butler County. From this interlocutory decree appeal 6723 is taken.

The trustee being advised by one of the Judges of the District Court that there was doubt as to whether the rights of the judgment creditor could be determined in a summary proceeding since he was an adverse claimant, began a plenary action on the equity side of the District Court, presumably to determine the respective rights to the property of judgment creditor and trustee, and seeking a temporary and permanent injunction likewise to restrain the sale of the Butler County property by the Sheriff of that county. The District Court in the latter proceeding denied the injunction and dismissed the suit. While no opinion was filed, it is asserted and not denied that the ground for dismissal was the absence of diversity of citizenship. From the order in the plenary proceeding appeal 6705 is taken by the trustee.

The power of the court to adjudicate rights of adverse claimants without their consent in summary proceedings was fully considered in Harrison v. Chamberlain, 271 U. S. 191. By the opinion there it is made clear that no jurisdiction for that purpose exists if the adverse claim is real

and substantial, and not merely colorable, but resort must [fol. 58] be had by the trustee to a plenary suit. The precedents are there fully cited, and require no restatement here.

The judgment creditor's adverse claim in the instant suit depends upon the validity of the levy under Ohio law. Section 11664, General Code, provides in substance that a Writ of Execution against the property of a judgment debtor shall command the officer to seize the goods and chattels of the debtor, and for want of goods and chattels, to sell his lands and tenements for cash. Section 11666 provides as follows:

"The officer to whom a Writ of Execution is delivered shall proceed immediately to levy it upon the goods and chattels of the debtor. If no goods and chattels can be found, the officer shall endorse on the execution the words 'no goods', and forthwith levy it upon the lands and tenements of the debtor which are liable to satisfy the judgment."

Section 11656 subjects all property of a judgment debtor in the county in which the judgment is obtained to a lien, but as to all other lands and chattels the debtor is bound only from the time they are seized upon execution.

In the instant case the sheriff levied simultaneously upon all of the personal property and real estate in Butler County. It is the Trustee's contention that the levy is invalid, and that the property was therefore not within the custody of the Hamilton County court. In addition there is the contention, and if valid it must be based upon appropriate findings of fact, that there were no proceedings pending in the Common Pleas Court of Hamilton County for the sale of the real estate at the time of the filing of the bankruptcy petition, and that in order to institute such sale it is necessary to execute a præcipe for a writ of Venditioni Exponas, or order of sale. It is contended that all such writs covering the real estate in question expired before the bankruptcy proceedings were begun. There is also a question, in view of the fact that the property was encumbered by mortgages, as to whether the proper method of securing execution of a judgment was by a creditor's bill. All of these contentions are controverted by the judgment creditor, and raise issues of fact and law not so far deter-

mined. It is true that on the judgment creditor's motion for disclaimer, certain facts were found by the Referee, and [fol. 59] conclusions of law announced, but the report of the Referee, so far as we are advised, is still in suspense in the District Court. The validity of the trustee's claim, and of that made adversely, depending upon disputed facts as well as controverted issues of law, their determination involves "fair doubt and reasonable room for controversy," Harrison v. Chamberlin, supra. The adverse claim is therefore substantial, and not merely colorable, and its merits can only be adjudged in a plenary suit. It follows, therefore, that the court had no jurisdiction to issue the temporary injunction in 6723, and the order appealed from therein is reversed. There are, perhaps, other grounds for such reversal, not requiring consideration.

In 6705 there was manifestly an attempt to present to the court the issues as to the rights of the respective parties to the property in Butler County in a plenary suit begun in equity. The plaintiff's pleading therein, denominated an application, leaves much to be desired if we are to interpret it as a bill in equity, both in its statement of grounds for relief and in the kind of relief prayed for. In view, however, of the great liberality provided by the Equity Rules in respect to amendments, in view of the fact that both litigants fully understood the purpose of the proceeding and no objection being made as to the sufficiency of the pleading to state a cause of action, we are content to consider it as a plenary action in equity to determine the right of control as between the State court and the bankruptcy court, especially in view of the answer therein consenting to jurisdiction and asking that the issues be decided in the case.

We come then to the question of jurisdiction in 6705, and whether the Trustee can maintain his action in the District Court against the Sheriff of Butler County, both of them being residents of the State of Ohio. This involves consideration of Section 23 of the Bankruptcy Act, being Section 46 b, Title 11, U. S. C. A., as amended by the Act of 1926, which provides:

"Suits by the trustee shall be brought or prosecuted only in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been

instituted, unless by consent of the proposed defendant, except suits for the recovery of property, etc."

[fol. 60] The meaning of this section was very thoroughly discussed by Judge Denison in Toledo Fence & Post Company v. Lyons, 290 Fed. 637, at 644. It was in that case the view of a majority of the court that except for this section the Federal court would have jurisdiction of all suits by a Trustee to recover debts due the bankrupt, as being suits arising under the laws of the United States. Section 23 puts a limitation upon that power, but there is an exception to the limitation. The exception relates to suits against parties who voluntarily appear and submit their rights to the court in a plenary suit by the Trustee. It was thought by the court that it would be unfortunate if such submission were held to be ineffective to permit defendants to voluntarily appear and submit their rights in the endeavor common to them and the trustee to get a speedy decision of all questions by one court.

This is not to say, of course, that jurisdiction may be conferred upon Federal courts by consent, either in respect to causes which fall without the constitutional grant of power or in respect to those which, being within such grant, fall without that field of constitutional judicial power which Congress has seen fit to occupy and confer upon the Federal courts. The consent here involved is that which operates to except certain cases from the restriction imposed by Congress in the above section to the general jurisdiction which the Federal courts have of cases arising under the laws of the United States.

We come then to the question of consent in the instant case. When the trustee first filed his plenary suit the defendant sheriff moved to dissolve the restraining order and to dismiss the suit on the ground, among others, that the court was without jurisdiction to entertain it. Eleven days later, however, the sheriff filed an answer whereby he expressly withdrew the motion to dissolve the temporary restraining order and the motion to dismiss the suit, entered his general appearance, and consented that the court might hear and determine all matters referred to in the petition therein. The very next day the sheriff asked leave to withdraw the answer. What disposition was made of the last motion the record does not disclose. It is to be assumed, however, that it was not pressed, since nothing was done

until a month later, when upon a second motion to dissolve [fol. 61] and dismiss the order now appealed from was entered. We cannot doubt that under these circumstances, and under familiar rules there was that consent to the jurisdiction of the court which operates as an exception to the limitation imposed by Section 23, as interpreted in the Toledo Fence & Post case. Certainly there was deliberation rather than inadvertence in the filing of the answer, evidenced by the specific withdrawal of the first motion to dismiss, the entry of a general appearance, and the express submission of all controversy to disposition by the court.

The case not having been heard upon its merits, and the record presenting no findings of fact or conclusions of law, as required by the Equity Rules, it is manifest that, though in equity, it cannot be here determined. In re Meifert, 57 Fed. (2d) 861 (C. C. A. 6). Such findings as were made by the referee, and such legal conclusions as were announced by him in his very able and exhaustive report, were upon a motion other than that which led to the assailed order, and so far as we are advised, they have never had the consideration of the District Judge. It follows that in 6705 the cause must be reversed and remanded to the District Court with instructions to set aside the order of dismissal, hear the controversy upon its merits, make appropriate findings of fact and conclusions of law, and enter such decrees, interlocutory or final, as equity may require. Such amendments to the pleadings as may more clearly define the issues, and the general as well as the special relief prayed, may properly be submitted to the discretion of the District Judge.

The order in each case is set aside.

[fol. 62] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 63] Supreme Court of the United States

Order Allowing Certiorari—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is

granted, limited to the question of the jurisdiction of the District Court under Sec. 23 (b) of the Bankruptcy Act.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,843. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 215. John C. Schumacher, Sheriff of Butler County, Ohio, Petitioner, vs. Ralph K. Beeler, Trustee in Bankruptcy of The Long & Allstatter Company, Bankrupt. Petition for a writ of certiorari and exhibit thereto. Filed July 23, 1934. File No. 215, O. T., 1934.